

Message Text

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PAGE 01 RIYADH 00585 161252Z
ACTION EB-08

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SUBJECT: BOYCOTT LANGUAGE IN PREQUALIFICATION FORMS: A PROPOSAL

REF JIDDA 1499

1. IT HAS BECOME EVIDENT THAT THE COMMERCE MINISTRY HAS NOT EFFECTIVELY COMMUNICATED ITS NEW POLICY ON BOYCOTT LANGUAGE IN PREQUALIFICATION FORMS TO OTHER MINISTRIES EVEN THOUGH L/C AND CONTRACT PROBLEMS ARE BEING WORKED OUT SMOOTHLY. WE HAVE BEEN TOLD BY COMMERCE OFFICIALS THAT PREQUALIFICATION BOYCOTT CLAUSES ARE SUPPOSED TO BE WAIVED ENTIRELY FOR U.S. FIRMS. IN FACT THE COMMERCE MINISTRY HAS NEVER SPECIFICALLY INSTRUCTED OTHER MINISTRIES TO THAT EFFECT.

2. THE OFFICIAL CIRCULAR BY WHICH THE COMMERCE MINISTRY CLAIMS TO HAVE PASSED ITS INSTRUCTION (SEE REFTEL) ONLY REQUIRES THAT SAUDI AGENCIES CLEAR NAMES OF FOREIGN FIRMS WITH ITS BOYCOTT OFFICE BEFORE SIGNING CONTRACTS WITH THEM. COMMERCE OFFICIALS SAY THIS

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PAGE 02 RIYADH 00585 161252Z

INSTRUCTION CLEARLY ESTABLISHES THAT COMMERCE HAS EXCLUSIVE JURISDICTION IN ALL BOYCOTT MATTERS AND THE OTHER MINISTRIES SHOULD KNOW BY IMPLICATION THAT THEY ARE TO NO LONGER REQUIRE BOYCOTT STATEMENTS. THIS INTERPRETATION IS NOT OBVIOUS AND IN FACT THE MORE NATURAL READING IS THAT THE KINGDOM IS TIGHTENING UP ITS BOYCOTT ENFORCEMENT AND AGENCIES SHOULD BECOME EVEN MORE

STRINGENT ABOUT BOYCOTT MATTERS.

3. USLO HAS SUGGESTED TO THE MINISTRY THAT SOME SORT OF CLARIFICATION MIGHT BE ADVISABLE BUT SO FAR THE MINISTRY STEADFASTLY REFUSED TO ACKNOWLEDGE THAT A PROBLEM EXISTS. IT SEEMS FAR MORE DIFFICULT TO DELETE LANGUAGE THAN CHANGE IT. OUTRIGHT WAIVER MIGHT SUBJECT THE KINGDOM TO ARAB CRITICISMS THAT IT IS BACKING AWAY FROM FULL SUPPORT OF THE PALESTINIANS, SOMETHING THE DIRECTOR HAS BECOME VERY SENSITIVE ABOUT. ALSO, SAUDI PROCUREMENT AND CONTRACTING OFFICERS HAVE IT INGRAINED IN THEM THAT THEY MUST HAVE A BOYCOTT CLAUSE IN ALL IMPORTANT DOCUMENTS. WHILE THEY READILY AGREE TO USE THE NEW LANGUAGE (USUALLY ONLY AFTER THE BUSINESSMAN GOES TO THE BOYCOTT OFFICE OF USLO AND GETS A COPY OF IT FOR THEM) THEY RESIST STRIKING BOYCOTT LANGUAGE ALTOGETHER WITHOUT SOMETHING TO PUT IN ITS PLACE.

4. A PROPOSAL: THAT WE APPROACH THE SAG WITH THE VIEW TO WORKING OUT A STANDARD PREQUALIFICATION FORM BOYCOTT ITEM. THE SAME LANGUAGE AS USED FOR THE CONTRACT CLAUSE MIGHT BE ACCEPTABLE - AN ACKNOWLEDGEMENT THAT WHILE OPERATING IN SAUDI ARABIA THE APPLICANT WILL BE SUBJECT TO SAUDI LAW AND THAT PART OF THIS LAW IS THE ARAB BOYCOTT.

5. WHILE MOMENTUM BEHIND THE SAUDI EFFORT TO REDRAFT LIMITED OFFICIAL USE

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PAGE 03 RIYADH 00585 161252Z

BOYCOTT LANGUAGE IS LARGELY GONE THERE MAY BE ENOUGH LEFT TO EXTEND LANGUAGE ALREADY APPROVED TO ANOTHER CLASS OF COMMERCIAL DOCUMENTS. THERE IS NO NEED TO REPRINT FORMS; ALL THAT IS NEEDED IS AN OFFICIAL INSTRUCTION THAT THE CONTRACT CLAUSE LANGUAGE ALSO IS ACCEPTABLE FOR PREQUALIFICATION FORMS.

6. THE BOYCOTT DIRECTOR HAS BEEN VERY HELPFUL ON A CASE-BY-CASE BASIS BUT HE MAY RETIRE SOON AND HIS SUCCESSOR MAY TAKE A LESS PERSONAL INTEREST IN THE PROBLEMS. EVEN THOUGH AD HOC SOLUTIONS CAN SOMETIMES BE ARRANGED MANY NEW TO MARKET FIRMS MUST BE DISCOURAGED BY THE DIFFICULTIES INVOLVED. CLEARLY A MORE GENERAL RESOLUTION IS PREFERABLE. GRANINGER

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